

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

ANNIE TUMMINO, *et al.*,

Plaintiffs,

V.

MARGARET HAMBURG, Commissioner  
of Food and Drugs, *et al.*,

Defendants.

Civil Action No. 12-CV-763

(Korman, J.)

(Pohorelsky, M.J.)

## NOTICE

Defendants respectfully notify the Court that they do not oppose Plaintiffs' motion for leave to amend the first amended supplemental complaint [Doc. No. 54], but reserve the right to move to dismiss the newly amended complaint for lack of jurisdiction.

Dated: June 4, 2012

*Of Counsel:*

DAVID J. HOROWITZ  
Deputy General Counsel

ELIZABETH H. DICKINSON  
Chief Counsel  
Food and Drug Division

ERIC M. BLUMBERG  
Deputy Chief Counsel, Litigation

SCOTT A. KAPLAN  
Assistant Chief Counsel  
U.S. Department of Health & Human Services  
Office of General Counsel  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

Respectfully submitted,

STUART F. DELERY  
Acting Assistant Attorney General

LORETTA E. LYNCH  
United States Attorney  
Eastern District of New York

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

**SHEILA LIEBER**  
Deputy Director, Federal Programs Branch

**F. FRANKLIN AMANAT**  
Assistant United States Attorney  
271 Cadman Plaza East, 7th Floor  
Brooklyn, NY 11201-1820  
Telephone: (718) 254-6024

/s/ Eric B. Beckenhauer  
ERIC B. BECKENHAUER  
Cal. Bar No. 237526  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW  
Washington, DC 20530  
Telephone: (202) 514-3338  
Facsimile: (202) 616-8470  
E-mail: eric.beckenhauer@usdoj.gov

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of June 2012, I caused the foregoing document to be served on Plaintiffs' counsel of record electronically by means of the Court's CM/ECF system.

/s/ Eric B. Beckenhauer

ERIC B. BECKENHAUER